

House Bill 400

By: Representatives Ehrhart of the 36th, Scott of the 2nd, Casas of the 103rd, Graves of the 12th,
and May of the 111th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively,
2 to education and revenue and taxation, so as to provide for a program of educational
3 improvement; to provide for definitions; to provide for student scholarship organizations; to
4 provide for educational improvement organizations; to provide for the Student Scholarship
5 Organization and Education Improvement Organization Board; to provide for applications;
6 to provide for accounting; to provide for procedures; to provide for an income tax credit with
7 respect to qualified education expenses; to provide for conditions and limitations; to provide
8 for powers, duties, and authority of the state revenue commissioner with respect to the
9 foregoing; to provide an effective date; to provide for applicability; to repeal conflicting
10 laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by
14 adding a new chapter to read as follows:

15 "CHAPTER 2A

16 20-2A-1.

17 As used in this chapter, the term:

18 (1) 'Board' means the Student Scholarship Organization and Educational Improvement
19 Organization Board created pursuant to Code Section 20-2A-4.

20 (2) 'Educational improvement organization' means a charitable organization in this state
21 that:

22 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal
23 Revenue Code and allocates 90 percent of its annual revenue for the support of

extracurricular activities, character education, art instruction, music instruction, foreign language instruction, innovative educational programs, or charter schools; and

(B) Provides its support of extracurricular activities, character education, art instruction, music instruction, foreign language instruction, innovative education programs, or charter schools without limiting availability to only students of one school.

(3) 'Eligible student' means a student who is:

(A) A Georgia resident enrolled in a Georgia secondary or primary school or eligible to enroll in a qualified kindergarten program or pre-kindergarten program; and

(B)(i) A member of a household whose total annual income does not exceed the PeachCare threshold, which, except as otherwise provided in this chapter, is 200 percent of the most recently published federal poverty guidelines in the federal register by the United States Department of Health and Human Services; or

(ii) Suffers from one or more of the following disabilities:

(I) Autism;

(II) Blindness;

(III) Deafness or hard of hearing;

(IV) Emotional and behavioral disorder;

(V) Intellectual disability;

(VI) Orthopedic impairment;

(VII) Other health impairment;

(VIII) Specific learning disability;

(IX) Speech-language impairment;

(X) Traumatic brain injury; or

(XI) Visual impairment.

(4) 'Extracurricular activity' means a school sponsored activity that requires enrolled students to pay a fee in order to participate, including fees for:

(A) Band uniforms;

(B) Equipment or uniforms for varsity athletic activities;

(C) Scientific laboratory materials; or

(D) In-state or out-of-state trips that are solely for competitive events.

Extracurricular activities do not include any senior trips or events that are recreational, amusement, or tourist activities.

(5) 'Innovative education program' means an advanced academic or similar program or a program of instruction in music, the arts, or a foreign language that is not part of the regular academic program of a public school but enhances the curriculum or academic

1 program of the public school or provides pre-kindergarten programs to public school
2 students.

3 (6) 'Qualified school or program' means a nongovernmental primary school or secondary
4 school that:

5 (A) Is located in this state, adheres to the provisions of the federal Civil Rights Act of
6 1964, and satisfies the requirements prescribed by law for private schools in this state;

7 (B) Annually administers and makes available to the public the aggregate test scores
8 of its students on a nationally standardized norm-referenced achievement test;

9 (C) Requires all teaching staff and personnel that have unsupervised contact with
10 students to be fingerprinted;

11 (D) Provides the student scholarship organization, upon request, all documentation
12 necessary for the students' participation, including the fee schedules; and

13 (E) Is academically accountable to the parent by:

14 (i) At a minimum, providing the parent with a written explanation of the student's
15 progress;

16 (ii) Administering or making provisions for a student to take an annual placement
17 test;

18 (iii) Cooperating with the parents of scholarship students who chose to participate in
19 state-wide assessments; and

20 (iv) Employing teachers who have regular and direct contact with each student at the
21 school's physical location.

22 (7) 'Student scholarship organization' means a charitable organization in this state that:

23 (A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal
24 Revenue Code and allocates 90 percent of its annual revenue for scholarships or tuition
25 grants to allow students to attend any qualified school of their parents' choice; and

26 (B) Provides educational scholarships or tuition grants to eligible students without
27 limiting availability to only students of one school.

28 20-2A-2.

29 Each student scholarship organization:

30 (1) Shall provide fingerprints of its owners and operators to be run through a state and
31 federal criminal history check;

32 (2) Must obligate 100 percent of its funds; however, up to 25 percent of the total
33 contribution may be carried forward for the next fiscal year;

34 (3) Must maintain separate accounts for scholarship funds and operating funds;

35 (4) May transfer funds to another student scholarship organization with the prior
36 approval of the board; and

(5) Must provide an audit of its accounts by an independent certified public accountant within 120 days after the completion of the student scholarship organization's fiscal year.

20-2A-3.

Each educational improvement organization:

(1) Shall provide fingerprints of its owners and operators to be run through a state and federal criminal history check;

(2) Must obligate 100 percent of its funds; however, up to 25 percent of the total contribution may be carried forward for the next fiscal year;

(3) Must maintain separate accounts for scholarship funds and operating funds;

(4) May transfer funds to another educational improvement organization with the prior approval of the board; and

(5) Must provide an audit of its accounts by an independent certified public accountant within 120 days after the completion of the educational improvement organization's fiscal year.

20-2A-4.

(a) There is created the Student Scholarship Organization and Educational Improvement Organization Board. The board shall consist of nine members. Three members each shall be appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. Each member shall be appointed for term of four years and until such member's successor is appointed and qualified.

(b) It shall be the duty of the board to:

(1) Review and approve the applications of eligible student scholarship organizations and educational improvement organizations;

(2) Issue certificates of eligibility to student scholarship organizations and educational improvement organizations;

(3) Distribute tax credit certificates, on forms provided by the state revenue commissioner, to board approved student scholarship organizations and educational improvement organizations for distribution to contributing taxpayers;

(4) Maintain records of all data submitted by student scholarship organizations and educational improvement organizations to the board as required under the terms of this chapter;

(5) Post and update as necessary a list of all student scholarship organizations and educational improvement organizations approved under this Code section on the publicly accessible website of the State of Georgia, www.georgia.gov; and

(6) Promulgate any rules and regulations necessary to implement and administer the tax provisions of this chapter.

1 20-2A-5.

2 (a) Each student scholarship organization shall submit to the board, on a form provided by
3 the board, information that enables the board to confirm that the organization is exempt
4 from taxation under Section 501(c)(3) of the Internal Revenue Code and must certify to
5 board that it is eligible to participate in the program.

6 (b)(1) Each educational improvement organization shall submit an application to the
7 board, on a form provided by the board, information that enables the board to confirm
8 that the organization is exempt from taxation under Section 501(c)(3) of the Internal
9 Revenue Code and must certify to board that it is eligible to participate in the program.

10 (2) The educational improvement organization shall submit with its application a
11 description of the proposed extracurricular activity or activities, character education
12 program or programs, art instruction program or programs, music instruction program or
13 programs, foreign language instruction program or programs, innovative education
14 program or programs, or charter schools on a form provided by the board. The board
15 shall consult with the local boards of education as necessary and shall review and approve
16 or deny the application.

17 20-2A-6.

18 (a) Each student scholarship organization shall report to the board, on a form provided by
19 the board, by January 12 of each tax year the following:

20 (1) The name and address of members and chairpersons of the board of the student
21 scholarship organization;

22 (2) The total number and dollar value of contributions and tax credits approved;

23 (3) A list of the individual donors, including the dollar value of each donation and the
24 dollar value of each approved tax credit;

25 (4) Total number of children utilizing tuition grants;

26 (5) Name and address of each represented school receiving grants, details of number of
27 tuition grant students, and total dollar value of grants utilized at each school served by the
28 student scholarship organization;

29 (6) The number of scholarships awarded during the immediately preceding school year
30 to eligible pre-kindergarten students;

31 (7) The total and average amounts of scholarships awarded during the immediately
32 preceding school year to eligible pre-kindergarten students;

33 (8) The number of scholarships awarded during the immediately preceding school year
34 to eligible students in kindergarten through grade eight;

35 (9) The total and average amounts of the scholarships awarded during the immediately
36 preceding school year to eligible students in kindergarten through grade eight;

(10) The number of scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12; and

(11) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

(b) Each student scholarship organization must report to the Department of Revenue, on a form provided by the Department of Revenue, by January 12 of each tax year the following:

(1) The total number and dollar value of contributions and tax credits approved; and

(2) A list of the individual donors, including the dollar value of each donation and the dollar value of each approved tax credit.

(c) Neither the board nor the Department of Revenue shall require any other information from student scholarship organizations, except as expressly authorized in this chapter.

20-2A-7.

(a) Each educational improvement organization shall report to the board, on a form provided by the board, by January 12 of each tax year the following:

(1) The total number and dollar value of contributions and tax credits approved;

(2) A list of the individual donors, including the dollar value of each donation and the dollar value of each approved tax credit;

(3) The names of the public schools and school districts that received grants during the immediately preceding school year; and

(4) A description of how each grant was utilized during the immediately preceding school year.

(b) The educational improvement organization shall report to the Department of Revenue, on a form provided by the Department of Revenue, by January 12 of each tax year the following:

(1) The total number and dollar value of contributions and tax credits approved; and

(2) A list of the individual donors, including the dollar value of each donation and the dollar value of each approved tax credit.

(c) Neither the board nor the Department of Revenue shall require any other information from educational improvement organizations, except as expressly authorized in this chapter.

20-2A-8.

The Department of Revenue shall provide a list of all student scholarship organizations and educational improvement organizations receiving contributions from businesses and

1 individuals granted a tax credit under Code Section 48-7-29.13 to the General Assembly
2 by January 30 of each year.

3 20-2A-9.

4 Each qualified school or program shall report to the appropriate educational improvement
5 organization, on a form provided by the board:

6 (1) The total number of fees and cash contributions payments received during the
7 previous calendar year;

8 (2) The total dollar amount of fees and contributions received by the school during the
9 previous calendar year;

10 (3) The total dollar amount of fees and contributions spent during the previous calendar
11 year; and

12 (4) A description of how the contribution dollars were spent during the immediately
13 preceding school year, including a breakdown of the dollar amounts spent on each
14 extracurricular activity, character education program, art instruction program, music
15 instruction program, foreign language instruction program, or innovative education
16 program.

17 20-2A-10.

18 The parent or guardian to whom a scholarship award is granted must restrictively endorse
19 the scholarship award to the private school for deposit into the account of the private
20 school. The parent or guardian may not designate any entity or individual associated with
21 the participating private school as the parent's attorney in fact to endorse a scholarship
22 warrant. A participant who fails to comply with this Code section forfeits the scholarship.

23 20-2A-11.

24 Contingent upon available funds, an eligible student may continue in the scholarship
25 program so long as such student's family income level does not exceed 300 percent of the
26 federal poverty level."

27 SECTION 2.

28 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
29 amended by adding a new Code Section to read as follows:

30 "48-7-29.13.

31 (a) As used in this Code section, the term 'qualified education expense' means the
32 expenditure of funds by the taxpayer to a student scholarship organization or educational
33 improvement organization operating pursuant to Chapter 2A of Title 20.

(b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter for qualified educational expenses as follows:

(1) For private schools:

(A) \$500.00 per year for a single individual or a head of household; or

(B) \$1,000.00 per tax year for a married couple filing a joint return; or

(2) For public schools:

(A) \$250.00 per year for a single individual or a head of household; or

(B) \$500.00 per year for a married couple filing a joint return.

(c) A corporation shall be allowed a credit against the tax imposed by this chapter for qualified education expenses in an amount not to exceed the actual amount expended or 75 percent of the corporation's income tax liability, whichever is less.

(d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified educational expense for the direct benefit of any dependent of the taxpayer.

(e) In no event shall the total amount of the tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the taxpayer against the succeeding five years' tax liability. No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) In no event shall the aggregate amount of tax credits allowed under this Code section exceed \$50 million per tax year with 2 percent of such aggregate amount reserved for small businesses as defined under paragraph (2) of Code Section 50-5-121.

(g) The commissioner shall preapprove tax credits subject to subsection (d) of this Code section.

(h) The commissioner shall allow the tax credits on a first come, first served basis.

(i) For the purposes of subsection (f) of the Code section, before making a contribution to a student scholarship organization or educational improvement organization, the taxpayer shall notify the student scholarship organization or educational improvement organization of the total amount of contributions that the taxpayer intends to make to the student scholarship organization or educational improvement organization. Before accepting the contribution, the student scholarship organization or educational improvement organization shall request preapproval from the commissioner for the taxpayer's intended contribution amount. The commissioner shall preapprove or deny the requested amount within 20 days after receiving the request from the student scholarship organization or educational improvement organization. If the commissioner preapproves the request, the student scholarship organization or educational improvement organization shall immediately notify the taxpayer that the requested amount was preapproved by the commissioner. In order to receive a tax credit under this subsection, the taxpayer shall make the contribution to the student scholarship organization or educational improvement organization within 20 days

1 after receiving notice from the student scholarship organization or educational
2 improvement organization that the requested amount was preapproved. If the student
3 scholarship organization or educational improvement organization does not receive the
4 preapproved contribution from the taxpayer within the required 20 days, the student
5 scholarship organization or educational improvement organization shall immediately notify
6 the department, and the commissioner shall no longer include this preapproved contribution
7 amount when calculating the limit prescribed in subsection (f) of this Code section.

8 (j) Preapproval of contributions by the commissioner shall be based solely on the
9 availability of tax credits subject to the aggregate total limit established under subsection
10 (f) of this Code section.

11 (k) In order for the taxpayer to claim the student scholarship organization or educational
12 improvement organization tax credit under this Code section, a tax credit certificate issued
13 by the student scholarship organization or educational improvement organization to which
14 the contribution was made shall be attached to the taxpayer's tax return. The tax credit
15 certificate shall contain the taxpayer's name, address, tax identification number, the amount
16 of the contribution, and the amount of the credit. The commissioner shall provide tax
17 credit certificates for issuance to the Student Scholarship Organization and Educational
18 Improvement Organization Board created under Code Section 20-2A-4.

19 (l)(1) No credit shall be allowed under this Code section with respect to any amount
20 deducted from taxable net income by the taxpayer as a charitable contribution to a bona
21 fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue
22 Code.

23 (2) The amount of any scholarship received by an eligible student or eligible
24 pre-kindergarten student shall be excluded from taxable net income for Georgia income
25 tax purposes.

26 (m) The commissioner shall be authorized to promulgate any rules and regulations
27 necessary to implement and administer the tax provisions of this Code section."

28 **SECTION 3.**

29 This Act shall become effective upon its approval by the Governor or upon its becoming law
30 without such approval and shall be applicable to all taxable years beginning on or after
31 January 1, 2007.

32 **SECTION 4.**

33 All laws and parts of laws in conflict with this Act are repealed.